

Comments on the Proposed EEO Rules

The proposed Equal Employment Opportunity (EEO) rules do not prohibit discrimination on the basis of disability.

On page 7 the proposed rule reads:

Anti-Discrimination Provisions

18. The broadcast EEO Rule adopted by the Commission in the *Report and Order* includes a provision prohibiting discrimination based on race, color, religion, national origin, or sex, with the exception that religious radio broadcasters may establish religious belief or affiliation as a job qualification for station employees.

The preamble to the Americans with Disabilities Act (ADA) Handbook reads:

When President Bush signed into law the Americans with Disabilities Act--the world's first comprehensive civil rights law for people with disabilities--in front of 3,000 people on the White House lawn on July 26, 1990, the event represented an historical benchmark and a milestone in America's commitment to full and equal opportunity for all its citizens.

The President's emphatic directive on that day--"Let the shameful walls of exclusion finally come tumbling down"--neatly encapsulated the simple yet long overdue message of the ADA: that 43 million Americans with disabilities are full fledged citizens and as such are entitled to legal protections that ensure them equal opportunity and access to the mainstream of American life.

Enactment of the ADA reflects deeply held ideals which treasure the contributions which individuals can make when free from arbitrary, unjust, or outmoded societal attitudes and practices that prevent the realization of their potential. The ADA reflects a recognition that the surest path to America's continued vitality, strength and vibrancy is through the full realization of the contributions of all its citizens.

Why has the FCC failed for many years to include provisions for Americans with disabilities in its policies? "Let the shameful walls of exclusion finally come tumbling down."

Chairman Powell, in a separate statement on the proposed EEO rules, said:

Individuals that operate broadcast facilities pursuant to a license they obtain from the government (in effect from the people of the United States) must do so in the public interest. And, it is our statutory charge to ensure that they do so.

If the public interest means anything at all it cannot possibly tolerate the use of a government license to discriminate against the citizens from whom the license ultimately is derived. Discrimination is an insidious legacy that has unquestionably denied certain citizens equal opportunity to savor the fruits born by this great country. No one is entitled to rewards they did not earn. No one is entitled to jobs for which they are not qualified. But, they are entitled to an equal opportunity to vie for those rewards and to compete for those jobs.

I cannot imagine that Chairman Powell's strong statement was meant to exclude individuals with disabilities from the public interest. Discrimination on the basis of disability is just as an insidious legacy that has unquestionably denied certain citizens equal opportunity.

Paragraph 19 of the proposed EEO rules reads:

19. We also propose to retain our policy of generally deferring action on individual complaints of employment discrimination against broadcasters and cable entities pending final action by the Equal Employment Opportunity Commission (EEOC) or other government agencies and/or courts established to enforce nondiscrimination laws.

However, we propose to retain the discretion to take action, notwithstanding the absence of a final decision by the EEOC or other agency/court, where the facts of a particular case so warrant.

Complaints of employment discrimination on the basis of disability are highly individualized and should not be discounted.

Broadcasters and cable entities should be compelled to report every complaint of employment discrimination filed with the EEOC on every application made to the FCC, as well as annually.

The rules should be explicit that a finding of employment discrimination against broadcasters and cable entities by the EEOC or other government agencies and / or courts established to enforce nondiscrimination laws **will** result in fines, suspension, or revocation of license by the FCC. "If the public interest means anything at all it cannot possibly tolerate the use of a government license to discriminate against the citizens from whom the license ultimately is derived."

The proposed rules do not define "final action". A finding of probable cause or the issuance of a right to sue letter by a government agency should warrant the consideration of the facts of a particular case. The rules should be explicit that the FCC will use its discretion in considering broadcast license applications under these circumstances.

There is an immediate need for the FCC to consider these revisions to its policy.

EchoStar Communications is broadcast license holder that has made application to the FCC to transfer its licenses in the EchoStar / Direct TV merger. The application is subject to FCC regulatory review and approval will be at the discretion of the FCC commissioners. For years EchoStar has benefited from licenses and services provided by the FCC.

But for years, the EEOC has received complaints that EchoStar discriminates on the basis of disability in employment practices. The FCC may be unaware because it did not require license holders to report complaints of discrimination on the basis of disability.

For example, in March 2002, the EEOC filed suit against EchoStar, accusing EchoStar of refusing to hire a blind man because of his disability in February 1999. In response to a newspaper ad, Dale Alton tried to apply for a job as customer service representative after completing a six month full time training course at the Colorado Center for the Blind. A representative of EchoStar's human resources department told him the company did not have adaptive tools that would make it possible for him to do the job.

The EEOC suit alleges EchoStar failed and refused to hire Alton because of his disability, that he was deprived an equal employment opportunity, that the unlawful employment practices were intentional and done with malice or with reckless indifference to his federally protected rights.

Prior to the EEOC suit, the Colorado Civil Rights Division had issued a finding of probable cause against EchoStar in 1999. The EEOC also issued a similar finding in 2000.

Also in 2000, the EEOC received another complaint that another blind applicant for a customer service job was informed that EchoStar was not prepared to accommodate him. The EEOC issued a right to sue letter and a lawsuit is currently proceeding.

At the time EchoStar announced its mega-merger plans with Direct TV in 2001, these complaints of discrimination were unresolved. Apparently, since discrimination on the basis of disability was not part of FCC broadcast license policy, EchoStar was unconcerned that these complaints would affect their merger plans.

Under the revisions proposed in these comments, these particular cases would warrant the FCC to use its discretionary powers to postpone the regulatory review and approval of this merger pending a final action by the EEOC or a court. The use of its discretion to postpone action would send a powerful message to all license holders that the FCC considers Equal Opportunity Employment an important aspect of its policy.

“Individuals that operate broadcast facilities pursuant to a license they obtain from the government (in effect from the people of the United States) must do so in the public interest. And, it is our statutory charge to ensure that they do so.”